

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

RANDY JOHNSON

Respondent

Case Nos.: I-02-72351

I-02-72445

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 - 2-1802.05, and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 72351) served on August 2, 2002, the Government charged Respondent Randy Johnson with a violation of 21 DCMR 700.3 for failing to properly containerize solid waste (the “Regulation”).¹ The Notice of Infraction alleged that Respondent violated the Regulation on July 17, 2002, at 4230 6th Street, S.E. (the “Property”), and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on September 24, 2002, this administrative court

¹ 21 DCMR 700.3 provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

issued an order finding Respondent in default and subject to a statutory penalty of \$1,000, in addition to the \$1,000 fine, and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Official Code §§ 2-1802.02(f) and 2-1801.04(a)(2)(A).

The Government served a second Notice of Infraction (No. 72445) on September 27, 2002. On October 23, 2002, Respondent filed an untimely answer with a plea of Deny and requested a hearing. On October 29, 2002, I issued an order setting the hearing in this case for November 21, 2002.

Norris Goins, the Government inspector who issued the Notices of Infraction (the “Inspector”), appeared on behalf of the Government. There was no appearance by Respondent or anyone on his behalf. Accordingly, pursuant to D.C. Official Code § 2-1802.03(b) I proceeded with the hearing, *ex parte*.

On November 25, 2002, Respondent filed a Praecipe requesting a new hearing, on the ground that he had the flu on the date of the scheduled hearing. On December 12, 2002, I held a hearing on Respondent’s request. The Inspector appeared on behalf of the Government, and Respondent also appeared.

Respondent stated that he didn’t have a reason why he did not contact this administrative court prior to the hearing to request a continuance because of his illness. He said he thought he would wait until he felt better and then he would schedule another hearing date. Regarding his defenses to the alleged violation, Respondent said he didn’t deny that he owned the Property at the time of the violation and he didn’t deny that the uncontainerized trash in question was his. However, Respondent said he wanted to testify about facts in his defense. Without objection by

the Government, I granted Respondent's request for a new hearing, and the parties proceeded with the hearing on the merits.

II. Summary of the Evidence

On July 17, 2002, the Inspector observed plastic bags filled with solid wastes, including typical household wastes and food packaging, cardboard boxes, and other trash and debris lying on the ground at the Property. The Inspector took a photograph of the area that shows the conditions upon which the charge was based. Petitioner's Exhibit 100. The Inspector testified that the conditions provided food or harborage for rodents.

Mr. Johnson testified that the trash in question came from the Property, which he was cleaning in preparation for its sale. The trash was deposited on the ground, uncontainerized, to be hauled away the next day.

Regarding Respondent's failure to file an answer in a timely manner, Mr. Johnson said he got the Notices of Infraction in this case confused with another Notice of Infraction from the District of Columbia Department of Consumer and Regulatory Affairs regarding two other different alleged violations of the DCMR that occurred on the Property on June 8, 2002, for which fines in the total amount of \$150 were sought. Respondent's Exhibit 200.

The Notices of Infraction in this case were issued by the District of Columbia Department of Health and a fine of \$1,000 was sought. Instructions on these Notices of Infraction state, in pertinent part: "You are charged with violating the District of Columbia laws or regulations stated below. You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service." A separate section of the Notice of Infraction states: "**WARNING:** Failure to answer

. . . each infraction on this Notice within 15 days of the date of service will result in the assessment of a penalty equal to and in addition to the specified amount of the fine.”

Based upon the testimony of the Inspector and Respondent, my evaluation of their credibility, the exhibits introduced into evidence, and the entire record in the case, I make the following findings of fact and conclusions of law.

III. Findings of Fact

On July 17, 2002, plastic bags filled with solid wastes, including household wastes and food packaging, cardboard boxes, and other trash and debris were lying on the ground at the Property. These conditions provided food, harborage, or breeding places for rodents.

Respondent admitted that he owned the Property and that he was responsible for the uncontainerized trash on the Property on the date of the violation.

I find Respondent’s explanation that he failed to file an answer in a timely manner because he confused the Notices of Infraction in this case with a Notice of Infraction from another government agency for other violations of the DCMR not reasonable under the circumstances and, accordingly, Respondent failed to show good cause for his failure.

IV. Conclusions of Law

Respondent violated the Regulation on July 17, 2002, by failing to properly store and containerize solid wastes in a manner that will not provide food, harborage, or breeding places for rodents, as charged in the Notice of Infraction. A fine of \$1,000 is authorized for a first

violation of the Regulation. 16 DCMR §§ 3201.1(a)(1) and 3216.1(b). I will impose a fine in the full amount authorized.

Regarding Respondent's failure to file an answer to the Notices of Infraction in a timely manner, the Civil Infractions Act requires a respondent to show "good cause" for failing to answer within the time allowed by the statute. D.C. Official Code §§ 2-1802.02(f) and 2-1802.05. If a respondent cannot make such a showing, the statute requires that a penalty equal to the amount of the prescribed fine be imposed. D.C. Official Code §§ 2-1802.02(f) and 2-1801.04(a)(2)(A). If a respondent fails to timely answer a second Notice of Infraction without good cause, the statutory penalty doubles. D.C. Official Code §§ 2-1802.02(f) and 2-1801.04(a)(2)(B).

Respondent's explanation that he thought the Notices of Infraction in this case were the same as or were somehow related to another Notice of Infraction from another Government agency is not credible. The Notices of Infraction in question are from the two separate agencies of the Government and they clearly identify the respective agencies and the violations charged. The Notices of Infraction in this case clearly state an answer must be filed within a prescribed time period, where to file it, and what the result would be for the failure to file an answer in a timely manner. This administrative court has consistently held that simply ignoring a Notice of Infraction does not constitute good cause for the failure to file a timely answer. *See DOH v. Triple Cooperative, Inc.*, OAH No. I-00-20447 at 6-7 (Final Order, April 25, 2002) and *DOH v. DRM Associates*, OAH No. I-00-40309 at 14 (Final Order, January 24, 2002) (ignoring clear instructions on the Notice of Infraction does not constitute good cause). Accordingly, I must impose the statutory penalty of \$2,000, in addition to the fine of \$1,000.

IV. Order

Based on the above findings of fact and conclusions of law, and the entire record of this case, it is this _____ day of _____ 2002:

ORDERED, that Respondent Randy Johnson shall pay a fine and statutory penalty in the total amount of **THREE THOUSAND DOLLARS (\$3,000)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7).

/f/ 01/31/03

Robert E. Sharkey
Administrative Judge

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